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Concerns Mount Over Private Transfer Fees

(Used with permission from ARELLO)

The debate over "private transfer fees" (PTFs) appears to be heating up. Several articles raising questions about the practice have recently been published in U.S. real estate-related news and business publications, industry organizations have called on federal agencies to clarify their stance on the issue and an increasing number of U.S. state legislatures have enacted or are currently considering new laws that either prohibit or restrict the practice.

PTFs, also referred to as "private reconveyance fees" or "transfer fee covenants" are a relatively recent phenomenon in U.S. real estate transactions. Widely cited as having first surfaced in Texas and California, the fees usually arise from covenants "running with the land" that require a payment to be made every time title to a property passes to a new owner. Transfer fees that must be paid to the beneficiary of the covenant reportedly range from 0.5% to 1.5% of the purchase price and contain terms that ensure their existence for as long as 99 years. In some new housing developments, the fees have been created as a means of generating income for a variety of community benefits including improvement projects, procuring or preserving open space and habitat preservation. In another example, the fee was used to reach a monetary settlement with environmental groups that were initially opposed to a residential development in California. The developers funded the settlement by the imposition of a private transfer fee amounting to 1% of the future sale price of hundreds of affected homes. In other cases, transfer fee covenants are designed only to provide income streams for developers, investors and, sometimes, individual property owners.

The Debate Over Legal, Economic and Transactional Outcomes of PTFs

The legal debate over PTFs rest, in part, on intricate questions of whether such covenants constitute an impermissible attempt on the part of the covenantor to retain part of the conveyed fee simple estate and/or whether such fees create prohibited restraints on alienation, meaning the free right of subsequent owners to convey "fee simple" title to the property. No known, dispositive court decisions examine these issues in the context of PTFs and, until a few years ago, no state laws addressed the practice.

Continued on page 4



From the Director's Desk

I hope you are all enjoying your summer.

The Commission currently hopes to propose the following legislation to the 2011 Legislature:

1. Change "public outcry" in the definition of "auction" to "public offering". This amendment will bring the definition into the 21st century because it includes on-line auctions that are now a current trend.

2. Give the Commission jurisdiction over unlicensed individuals and those individuals who let their licenses expire but committed a violation while licensed. Many states have in place or are in the process of obtaining jurisdiction over unlicensed individuals who cross state lines to practice real estate but neglect to become licensed in those states. South Dakota experiences this activity and the Commission incurs expenses when it has to conduct an investigation and issue a Cease and Desist Order. This legislation would allow the Commission to assess costs and fines to the parties involved. In addition, this legislation gives the Commission authority to discipline an individual who commits a violation but lets the license lapse to avoid a disciplinary action. By having jurisdiction when this happens, the Commission will be able to conduct disciplinary proceedings and actions against these individuals.

3. Define reasons that permit the Commission to go into executive session to stay in compliance with the Open Meetings Act. The current Open Meetings Act, which went into place a couple of years ago, lists reasons for which a government body can enter into Executive Session. Like other boards and commissions, the Real Estate Commission wants to further define those reasons to better reflect circumstances specific to the Commission's charge.

In addition to legislation, the Commission is planning to propose the following administrative rules:

1. Revise most of the chapter related to Auctioneers which will include definitions, advertising and auction procedures.

2. Allow for Consent Orders to be issued in certain cases in lieu of a formal hearing. Unlike a Stipulation, the Consent Order would be an admission of guilt by the licensee.

In closing, I would like to congratulate Commissioner Brian Jackson who was recently appointed by Governor Rounds to serve a final 3-year term. Commissioner Jackson brings a wealth of knowledge to the Commission in regard to mortgage banking, as well as a non-licensee's perspective.

DjN

SDREC Commission Chair Appointed to National Council



Congratulations to Commissioner Eisnach!

South Dakota Volunteer Appointed to AARP National Policy Council
(press release from AARP SD)

(Pierre) Former Pierre Mayor, and long-time AARP volunteer and advocate, Dennis Eisnach, has been appointed to serve on the AARP National Policy Council (NPC). The NPC is a 25-member all volunteer policy analysis and advisory body to AARP's Board of Directors. The NPC is charged with leading efforts to integrate member and public opinion with careful study of policies, and making policy recommendations to AARP's Board of Directors.

"We are thrilled with Mr. Eisnach's appointment to the National Policy Council and that he'll be able to insert his expertise on rural America into the conversations taking place in Washington regarding AARP policies and priorities," said Sarah Jennings, state director for AARP South Dakota. "His long-time commitment to public service, knowledge and experiences working on behalf of rural America, and dedication to working for positive social change make him a perfect fit to help guide the policies of AARP."

Mr. Eisnach's responsibilities include participating in national issue forums, reviewing polling research, and examining policy trends and analyses.

"Mr. Eisnach brings a tremendous amount of knowledge and experience to the NPC. AARP members across South Dakota and the country are fortunate to have Mr. Eisnach representing them and working on their behalf," Jennings said.

Mr. Eisnach has extensive experience in policy development, implementation and management at the local and state level. During a 20-year career with the South Dakota Highway Patrol, Mr. Eisnach served as Superintendent for seven years. Having held elected offices as Mayor of Pierre and the South Dakota Public Utilities Commission, Mr. Eisnach has significant knowledge and expertise in the areas of utilities, public revenues and budgets and livable communities. As a member and Chairman of the SD Public Utilities Commission he assessed and recommended policy to mitigate the impact of the deregulation of the telecommunications industry on rural populations in South Dakota.

Eisnach served on the Executive Council of AARP South Dakota and has served as Interim State President of AARP SD. He is highly respected for his commitment and contributions to AARP South Dakota and was a 2007 Andrus Award recipient.



USDA Rural Development Kicks Off Campaign to Assist 20,000 Low and Very- Low Income Families With Buying a Home

The U.S. Department of Agriculture has kicked off its "All the Way to 20K" campaign to assist low and very-low income families become homeowners. Across the nation, USDA, through its Rural Development mission area, has approximately \$2.5 billion for the Section 502 Direct Loan Programs and with these funds, 20,000 families can become successful homeowners.

Elsie M. Meeks, State Director for Rural Development in South Dakota, wants consumers to know the agency has offices across the state to assist them in achieving the dream of home ownership with a program that makes loans directly funded by the government. "Affordable housing is important to rural communities," said Meeks. "Providing housing opportunities to rural residents is just one way USDA enhances the ability of rural communities to develop and to grow, ensuring the best possible quality of life."

South Dakota Rural Development has more than \$11.3 million in funding for its Direct Home Loan Program, which is available to low- and very-low income households in rural areas where the population is less than 10,000. Some areas with populations of not more than 20,000 also are eligible. By definition, very-low income is defined as below 50 percent of the area median income (AMI). Low income is defined as between 50-80 percent of AMI. Visit <http://eligibility.sc.egov.usda.gov/eligibility/welcomeAction.do?pageAction=pageLoad&requestInfo=DirectIncomeLimits&NavKey=incomelimit@11> for income limits.

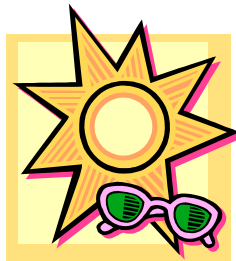
With the direct loan program, there is no down payment requirement and closing costs may be included in the loan. Maximum loan amounts vary by county and applicants may be eligible for

payment assistance, which would subsidize the interest portion of the house payment, lowering the overall monthly payment amount. Applicant's eligibility requirements include good credit history, adequate and dependable income and repayment ability for the loan. Moreover, with direct loans there is no confusion about what type of mortgage loan a buyer will get. Loans are for terms up to 33 years; and for those with incomes below 60 percent of AMI that cannot afford 33-year terms, a 38-year term is available.

Housing approved for purchase under this program must be modest in size, design and cost. This means not having market value in excess of the applicable area loan limit and is free of certain prohibited features (like a swimming pool). Additionally, the home must meet Rural Development's requirements for decent, safe and sanitary housing – a determination that is made by staff at the local office. Rural Development officials usually make a decision with 30 days of receipt of the loan application.

All South Dakota counties, excluding the towns of Sioux Falls and Rapid City, are eligible areas. To determine eligible areas, go to <http://eligibility.sc.egov.usda.gov>. For more information about the direct loan program, contact the nearest USDA Rural Development office, a list of which can be found online at <http://www.rurdev.usda.gov/sd>, or call the South Dakota State Office at 605-352-1100 and ask to speak to a single family home loan specialist. USDA Rural Development staff will gladly meet with prospective homeowners who wish to buy in any eligible area of the state.

For additional information on this and other Rural Development programs, please call 605-352-1100 or visit our state website www.rurdev.usda.gov/sd



Commission Member Re-appointed

Governor Mike Rounds recently re-appointed Brian Jackson to the South Dakota Real Estate Commission for another 3-year term. Brian is a life long South Dakota resident and a graduate of Augustana College in Sioux Falls, with a bachelors degree in Business Administration.

Brian began his banking career in Pierre and relocated to Sioux Falls in 2003. Currently, he is a mortgage/personal banking officer for Great Western Bank. Brian and his wife, Molly, have 2 boys.

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THE COMMISSION AND STAFF

Dennis Eisnach, Chair Pierre
Paula Lewis, Vice-Chair Rapid City
Eileen Fischer, Member Fort Pierre
Charlie Larkin, Member Watertown
Brian Jackson, Member Sioux Falls
Dee Jones Noordermeer,

Executive Director Pierre
Karen Callahan, Education Dir. Pierre
Norma Schilling, Licensing Pierre
Michelle Metzinger, Compliance .. Pierre
Angela Hagen, Compliance Sioux Falls

Articles by outside experts express the author's particular viewpoints. These opinions are not necessarily shared by the Commission, nor should they be mistaken for official policy. The articles are included because they may be of interest to the readers.

Concerns Mount Over Private Transfer Fees

Continued from page 1

The debate over PTFs is also rooted in the unknown potential economic and other consequences of such arrangements. In February, the American Land Title Association (ALTA) issued a white paper entitled, *"Private Transfer Fee Covenants and Their Consequences for Real Property"*. The paper suggests that, while it is not yet clear how these covenants will ultimately affect consumers, there is a strong potential for negative outcomes. The paper suggests that, among other things, such arrangements may steal equity from consumers, cost consumers money, depress home prices and reduce transparency and exploit the complexity of real estate transactions. On the other hand, at least one company strongly favors the practice. New York-based Freehold Capital Partners markets a program that it says "...helps the owners of real estate projects apportion infrastructure and development costs in a fair and equitable way through the use of reconveyance fee financing." A press release issued in April, sourced to Freehold Capital, announced the publication of an article entitled, *"The Economics of Private Transfer Fee Covenants"* by land economist Dr. Tom McPeak. The author extols the benefits of PTFs as a win-win-win situation: "For developers, transfer fees help reduce the sales price of their properties, since all the infrastructure development costs do not need to be recouped from the initial sale...; for the homebuyer, market forces dictate that homes with transfer fee covenants will be cheaper to buy than those without such obligations...; and communities benefit because a portion of the income is typically dedicated....[to] support... non-profit community-based charitable organizations..."

There is also a concern that these kinds of arrangements are likely to cause ongoing transactional problems. Among those are title search difficulties in locating and identifying such arrangements in the covenants, conditions and restrictions (CC&Rs), appraisals that don't take such covenants into account, consumers who are not aware of the fees until closing, delayed or cancelled transactions and, ultimately,

unmarketable titles arising from questions about the legality and enforceability of such arrangements. ALTA's white paper urges consumers, policymakers, real estate professionals and other stakeholders to evaluate and assess the consequences of PTF covenants.

Federal Agencies Pressed to Clarify Position on PTFs

In March, the National Association of REALTORS® (NAR) and ALTA sent a joint letter to U.S. Federal Housing Commissioner David H. Stevens, asking the Department of Housing and Urban Development (HUD) to clarify its position prohibiting the use of private transfer fees for FHA-insured mortgages and to oppose private transfer fees for other mortgages, as well. In the letter, the two associations expressed their concerns that such fees will increase the cost of homeownership and that "...there is virtually no oversight on where or how proceeds can be spent, on how long a private transfer tax may be imposed, or on how the fees should be disclosed to home buyers." The groups say that at least one company is reportedly negotiating with institutional investors to "securitize" pools of transfer fees, which will essentially create bonds that can be sold on a secondary market, based on future cash flows. Both NAR and ALTA believe that these fees generate revenue for developers and investors but often provide no service for homebuyers.

According to NAR's *REALTOR® Mag* online publication, HUD responded in April by clarifying that such fees attached to FHA properties would be a violation of HUD regulations. NAR says that it is awaiting word from the U.S. Federal Housing Finance Agency (FHFA) for clarification of its position on the use of the fees for Fannie Mae, Freddie Mac and Federal Home Loan Bank mortgage purchases.

Current State Legislation

Nine U.S. jurisdictions (Florida, Missouri, Kansas, Oregon, Arizona, Iowa, Maryland, Utah and, most recently, Minnesota) have enacted laws that prohibit or restrict private transfer fees. In addition, Texas laws prohibit private transfer fees with respect to residential properties only, and California has enacted statutes that impose recordation and pre-closing disclosure requirements on the practice. At least a dozen other states are considering prohibitive or restrictive legislation.

Scammers Advertising Real Estate Listings as Rental Properties on Craigslist

The SDREC office has received calls from licensees regarding their residential sale listings appearing fraudulently on Craigslist.com as rentals. Unfortunately, this has become a popular scheme whereby the scammers copy listings from the MLS and/or other public websites, and post the information onto Craigslist under available housing rentals. The contact information for these bogus listings usually leads to people in foreign countries and the transactions involve wiring money.

The best defense against this scheme is simply public awareness. Licensees can notify Craigslist to remove the posts, file an internet crime complaint with the FBI at www.ic3.gov, and most importantly, help educate the public. Urge clients and consumers alike to be cautious about real estate transactions involving the wiring of funds to a foreign country. This a red flag for fraud!

Citations Issued

The Commission established the Citation Program to diminish the number of license law violations, decrease time required to bring licensees into compliance and to recover costs involved when action is required. The following individuals and/or firms have been issued citations. Each licensee/company has agreed to a Stipulation of Assurance and Voluntary Compliance and has satisfied the requirements of the stipulation.

Failure to report change of association within the required timeframe:

Renee Klug, Rapid City, Broker Associate. \$50 penalty

Stephanie Lien, Rapid City, Broker. \$100 penalty (2 citations)

Russell Scheetz, Rapid City, Broker Associate. \$50 penalty

Audit violation/Failure to reconcile trust account/Trust account not balanced:

Robert Burke, Pierre, Broker. \$50 penalty

Calendar of Events

July 5

SDREC Office Closed (Independence Day Holiday)

August 18-19

Commission Meeting, Pierre

September 6

SDREC Office Closed (Labor Day)

October 6-7

Commission Meeting, Pierre

Fannie Mae Launches New Series of “Five Step” Guides to Help Educate Homeowners and Potential Home Buyers

First Three Tip Lists Focus on Home Buying, Housing Counselors and Mortgage Modification Scams

Washington, DC – Fannie Mae launched the first three in a series of “Five Step” guides, offering useful information for current homeowners, those interested in purchasing a home and homeowners who may be struggling with their current mortgage. Each guide focuses on a different topic and provides five specific tips.

The first three guides released provide tips on the following subjects:

Actions to Take Before Buying a Home – As the housing downturn has shown, homeownership is about more than buying a home. It’s important to make sure you can keep your home over the long-term. Fannie Mae offers five steps to help those thinking about buying a home select the right house for them and understand the affordable financing options that can help make homeownership a long-term success.

How Housing Counselors Can Help – Whether you’re thinking about buying a home or you’re a current homeowner, Fannie Mae highlights five key ways housing counselors can help make

homeownership successful for you. Housing counselors offer professional advice, ensuring you can sustain your home purchase over the long term and providing guidance if unforeseen circumstances make it difficult for you to continue paying your mortgage.

Protect Yourself from Mortgage Modification Scams – Mortgage modification scams can occur when unscrupulous people prey on borrowers who are struggling to keep their homes. While they promise to help, the people who perpetuate mortgage scams do little to no work, charge excessive fees, and use tactics that often put the homeowner at greater risk of losing their home. If you’re modifying your mortgage or facing foreclosure, Fannie Mae offers five key ways to protect yourself from mortgage rescue scams.

The guides are available at www.fanniemae.com/kb/index?page=home&c=fivesteps.

New Licensees

The SDREC would like to welcome the following new licensees:

Broker

Petersen, Ryan M – Sioux Falls

Broker Associate

Baker, John E – Buffalo Gap
Bauer, Nancy – Aberdeen
Buckley, Christopher S – Sioux Falls
Burlison, Scott J – Rapid City
Camp, Corey – Sioux Falls
Cooper, Darin L – Spearfish
Harding, Catherine J – Brandon
Harding, Heath S – Brandon
Hinkle, Warren L – Piedmont
Hoftiezer, Douglas L – Watertown
Hurlburt, Eric E – Sioux Falls
Hurlburt, Lori M – Sioux Falls
King, David W – Sioux Falls
Lacey, Tod A – Dell Rapids
Larson, Patti D – Woonsocket
Lewis, Faith C – Custer
Pederson, William S – Sioux Falls
Roach, John F – Huron
Ruby, Gloriann D – Belle Fourche
Schoenfelder, Linda J – Sioux Falls
Schwebach, Timothy J – Dell Rapids
Scott, Jason T – Spearfish
Silverman, Ronald M – Lemmon
Suto, Connie M – Rapid City

Swenby, Dianne M – Sioux Falls
True, David K – Rapid City
Vellema, Michael W – Sioux Falls
Warriner, Denise C – Sioux Falls

Salesperson

Koerselman, Tamera R – Sioux City, IA

Home Inspector

Breen, Patrick K – Rapid City
Flanagan, Mitchell T – Vermillion
Vaydich, Brian A – Anthon, IA
Verbeck, Christopher S – Hill City
Wermes, Jerry M – Bronson, IA

Property Manager

Falcon, Kathryn M – Pierre
Hausman, John A – Yankton
Hurkes, Chanelle – Sioux Falls
Kattenberg, Joshua D – Hull, IA
McKeown, Ana – Sturgis

Residential Rental Agent

Bartekoske, Traci M – Sioux Falls
Dirksen, Sherrilyn – Sioux Falls
Glatt, Holly M – Sioux Falls
Hopkins, Keri – Lead
Jacobson, Michelle L – Harrisburg
Kaskie, Moe Mary E – Sioux Falls
Kattenberg, Derek A – Hull, IA
Ladson, Samantha J – Sioux Falls
Pockrandt, Amber N – Sioux Falls
Slingsby, Darla L – Hot Springs

Timeshare Agent

Grider, Karen M – Rapid City
O’Kief, Stephanie – Rapid City
Olson, Garry E – Chamberlain
Sanders, Aaron R – Rapid City
Schuring, Kayla A – Spearfish



In Memoriam

The SD Real Estate Commission extends its sincerest sympathy to the families and friends of the following licensees who recently passed away:

Former SDREC Commissioner
W. James “Jim” Behnam, Pierre
Tim Benning, Hill City
Ed Mehlhaff, Aberdeen
Andy Pajor, Sioux Falls
Richard Payne, Yankton

APPRAISER UPDATE

This section of the South Dakota Real Estate Review is the responsibility of the South Dakota Dept. of Revenue & Regulation Appraiser Certification Program. Articles are printed here to communicate pertinent information to those appraisers who receive this newsletter and are licensed under the Certification Program. Appraiser certification inquiries can be directed to Sherry Bren, Program Administrator, 445 E. Capitol, Pierre, SD 57501, 605-773-4608

Appraiser Certification Program Mission–Purpose–Intent

The Appraiser Certification Program was implemented July 1, 1990, pursuant to enactment of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) by Congress. The mission of the Program is to certify, license and register appraisers to perform real estate appraisals in the state of South Dakota pursuant to Title XI (FIRREA). The purpose of the Program is to examine candidates, issue certificates, investigate and administer disciplinary actions to persons in violation of the rules, statutes and uniform standards, and approve qualifying and continuing education courses. Title XI intends that States supervise all of the activities and practices of persons who are certified or licensed to perform real estate appraisals through effective regulation, supervision and discipline to assure their professional competence.

Appraiser Certification Program Advisory Council

Council members provide recommendations to the Secretary of the Department of Revenue and Regulation in the areas of program administration in order to sustain a program that is consistent with Title XI. The Council meets quarterly in public forum. See the Website for meeting information. www.state.sd.us/appraisers

New Licensees – April/May/June 2010

Barbara J. Schaer, State-Licensed –
Gordon, NE

Patricia A. Smith, State-Certified
Residential – Council Bluffs, IA

Beverly K. Luke, State-Registered –
Rapid City, SD

Deborah K. Ellerton, State-
Registered – Rapid City, SD

Calvin D. Goding, State-Certified
General – Omaha, NE

Information Regarding Disciplinary Actions

Public information regarding disciplinary action taken against an appraiser is available upon written request to the Department of Revenue and Regulation, Appraiser Certification Program, 445 East Capitol Avenue, Pierre, SD 57501 or e-mail – Sherry.Bren@state.sd.us. Include in the request for information the name of the appraiser and the appraiser's city and state of residence. (Disciplinary action may include denial, suspension, censure, reprimand, or revocation of a certificate by the department. (ARSD 20:14:11:03))

The following disciplinary action has been taken by the Department of Revenue and Regulation, Appraiser Certification Program:

James T. Payne, Yankton, South Dakota – Complaint Case # 08-305. Effective March 8, 2010 the Circuit Court First Judicial Circuit affirmed the Order of the Office of Hearing Examiner's Corrected Decision denying James T. Payne's Renewal Application for State-Certified General Appraiser Certificate.

Anonymous Complaints

ARSD 20:14:11:01.01. Anonymous complaints. Initiation of an investigation may be commenced upon receipt of an anonymous complaint if it meets the following criteria:

(1) The allegations of violations of any provision of this article are considered credible and based upon factual information which is independently verifiable; and

(2) The complaint is accompanied by a copy of the appraisal report or other documents which contain clearly identifiable errors or violations of the provisions of this article.

Review of Cases – 01/01/10 - 05/20/10

For the period 01/01/2010 through 05/20/2010, the Department has received 10 upgrade applications and initiated 10 complaint investigations.

Upgrades – 6 pending.

Complaints – 8 pending.

Upgrades – April/May 2010

James Bailey, State-Certified Residential
Kristie Hankel, State-Certified Residential

Appraiser Qualifications Board Q&A

The Appraiser Qualifications Board (AQB) of The Appraisal Foundation establishes the minimum education, experience and examination requirements for real property appraisers to obtain a state certification. The AQB Q&A is a form of guidance issued by the AQB to respond to questions raised by appraisers, enforcement officials, users of appraisal services and the public to

illustrate the applicability of the Real Property Appraiser Qualification Criteria and Interpretations of the Criteria in specific situations and to offer advice from the AQB for the resolution of appraisal issues and problems. The AQB Q&A may not represent the only possible solution to the issues discussed nor may the advice provided be applied equally to seemingly similar situations. AQB Q&A does not establish new Criteria. AQB Q&A is not part of the Real Property Appraiser Qualification Criteria. AQB Q&A is approved by the AQB without public exposure and comment.

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Qualifying Education

Question 1: I am interested in beginning an appraisal career. I found some real estate appraisal courses offered at a local community college, but found out they are not AQB CAP-approved courses. Is it true that the only courses I can take are AQB CAP-approved courses?

Question 2: I received my Certified Residential appraiser credential in 2004, and now I would like to get my Certified General credential. According to my state appraiser regulatory agency, because I did not satisfy the qualifying education requirements for the Certified General credential prior to January 1, 2008, I am required to start from the beginning and complete all the qualifying education required for a Certified General credential. I am told this even includes the classes I originally took to get my Certified Residential credential (e.g. *Basic Appraisal Principles and Basis Appraisal Procedures*). Is this correct?

Continuing Education

Question 1: I am a state-certified appraiser and was told by my state appraiser regulatory agency the 15-hour National USPAP Course would not satisfy my continuing education requirement to complete the 7-hour National USPAP Update Course. Why can't I take the 15-hour course in lieu of the 7-hour course?

Question 2: I took some courses as qualifying education in order to obtain my appraisers credential. Am I allowed to re-take these same courses again for continuing education purposes now that I'm credentialed?

Question 3: I am a state regulator charged with reviewing and approving courses for continuing education (CE) for my state. An education provider submitted CE courses for review that are designed to prepare candidates for the National Uniform Licensing and Certification Examinations. Can the state approve an "exam pre" course for CE?

Experience Credit

Question: I am pursuing a General Certification credential. The firm I work with has a diverse appraisal practice including the valuation of real property and the valuation of personal property. Can I claim experience for personal property appraisal assignments where I am not appraising the real property interest?

Other Issues

Does the AQB *Real Property Appraiser Qualification Criteria* require an applicant to undergo a criminal background check prior to obtaining an appraiser credential?

Answers to the above questions can be found at: www.appraisalfoundation.org.

GUIDANCE CONCERNING DESKTOP APPRAISAL ORDERS

(Article courtesy of the North Carolina Appraisal Board)

A new desktop appraisal product was released in February 2010. The Appraisal Board has received numerous telephone calls and emails about this product and others that are similar. Although the Board does not approve or prohibit specific forms or software used to deliver appraisal results, the Board does have several concerns about this type of assignment.

An assignment is an agreement between an appraiser and a client for a valuation service. Once an appraiser accepts an assignment, USPAP applies to the appraiser's actions. Even if an appraiser ends up not completing the assignment or does not get paid, the appraiser must still comply with USPAP. If an appraisal report is created and sent to the client, a workfile must be produced and maintained. USPAP requires that the work file must contain

enough information to produce a summary appraisal report from the workfile contents.

This is a valuation service regarding the subject property that would have to be disclosed under the 2010 change to the Conduct Section of the Ethics Rule of USPAP, even if no report was transmitted and/or no payment was received. According to the instructions for this product, if an appraiser accepts an assignment to do this type of appraisal but subsequently discovers that the subject property does not meet minimum requirements, the appraiser will not get paid. This is referred to as a "no-hit". Since an assignment that results in a "no-hit" may not be tracked in invoicing software, the assignment would have to be entered into some other type of tracking software to make sure one complied with the new disclosure requirement in USPAP.

The Scope of Work Rule of USPAP states that the appraiser, not the client, must determine the scope of work necessary to develop credible assignment results. In addition, the Scope of Work rule states that "An appraiser must not allow assignment conditions to limit the scope of work to such a degree that the assignment results are not credible in the context of the intended use." There are several assignment conditions in this product that are referred to as "appraisal report minimum requirements". Some may be unacceptable.

This product requires appraisers to use MLS as the primary data source. In many areas of our state, MLS is not available or is unreliable. A better source of data might be the county tax office or a private data collection system. The product also requires that appraisers must use a minimum of three closed comparable sales and a comparable listing and/or pending sale. At least two of the comparable sales must be less than 120 days old, and at least two must be located within one mile of the subject. The GLA of the comparable sales must be within 20% of the GLA of the subject. Appraisals of condominiums with more than 15 units must include at least two comparable sales from the development within the last 12 months and at least one comparable listing and/or pending sale from the development. Condominiums with 15 units or less must include at least one comparable sale from the development within the past 12 months and, when available, a comparable listing or pending sale from the development. This

SD Real Estate Commission
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Pierre, SD 57501

product does not allow the appraiser to use the best data available and may well limit the amount of work performed to such an extent as to violate the Scope of Work Rule.

Of major concern is the assignment condition that the appraiser will not receive a fee if the appraiser cannot meet all the product requirements. As noted above, this is referred to as a “no hit”. “No-hits” are produced when the appraiser cannot produce a credible value due to insufficient subject data, the subject is an ineligible property type, the appraiser cannot meet all of the minimum report requirements, the subject is zoned commercial/industrial, or the subject is not at its highest and best use.

It appears that the assignment conditions may violate the Management Section of the Ethics Rule. For example, if the appraiser searches for comps but discovers there have been none within the last 120 days, the appraiser will not get paid. If the subject is located in a transitional area and the highest and best use would be as an interim or commercial use, it is a “no-hit” and there is no fee. The fee for the assignment is contingent on a predetermined result - the reporting of comps that meet certain criteria, or a finding that the subject

meets the product requirements. This type of assignment may result in the loss of objectivity. An appraiser may be tempted to use sales that he or she would not otherwise use, or to simply concur that the current use is the highest and best use, in order to receive a fee. The fact that an appraisal may not be completed (a “no-hit”) is irrelevant. The Ethics Rule prohibits accepting such an assignment.

There are appraisal products on the market now that allow or even require the appraiser to choose comparable sales from a database maintained by the software vender or client. Most of the comps in those systems are data mined from other appraisal reports. These services are not connected directly to a local MLS system. Sometimes an employee of the software company may contact local real estate brokers to obtain comparable sales. If an appraiser uses this database for sales, the database must be listed as the source for comparable sales, with MLS or another source used for verification of those sales. In addition, if the appraiser is given comparable sales by the client or vendor, the appraiser must disclose that he or she received significant assistance in choosing comparable sales. Some of these products give an

appraiser a discount if the appraiser voluntarily “contributes” appraisal reports to the software database so that subject and comparable information can be mined. Keep in mind that doing so is a violation of the Confidentiality Section of the Ethics Rule of USPAP, as assignment results are also communicated to the database.

A final note – the low fee paid for this assignment does not in any way lessen the appraiser’s legal requirement to comply with USPAP.

2010 Renewal

The 2010 renewal applications will be mailed the first week in July. In order to renew your certificate for state-certified general, state-certified residential, state-licensed and state-registered appraiser you must submit the completed application and the applicable renewal fees. The completed application and applicable renewal fees are due in the Appraiser Certification Program office by August 17, 2010. If you have any questions, please feel free to contact Sherry Bren. [telephone - 605.773.4608 -- e-mail Sherry.Bren@state.sd.us]